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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/644,182

08/20/2003

James G. Buechler

5555

7590

04/27/2006

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Jasper, IN 47547

EXAMINER

CHEN, JOSE V

ART UNIT

PAPER NUMBER

3637

DATE MAILED: 04/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/644,182	<b>Applicant(s)</b> BUECHLER, JAMES G.	
	<b>Examiner</b> José V. Chen	<b>Art Unit</b> 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8 and 9 is/are rejected.
- 7) ☒ Claim(s) 7 and 10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Allowable Subject Matter***

Prosecution on the merits of this application is reopened on claims 1, 2, 4, 5, 6 considered unpatentable for the reasons indicated below. Any inconvenience is regretted.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5, 6 are rejected under 35 U.S.C. 102(b) as being anticipated by McIntyre et al. The patent to McIntyre et al teaches structure as claimed including a plurality of modular upright shelving supports (12) to be spaced from each other in the length direction and including a pair of end support units and at least one intermediate support unit between the end units (column 4, lines 44-48), each unit including a plurality of generally horizontal through passages (34, 36) for receiving and respectively supporting a plurality of elongated shelf-supporting rails (14, 16) of varying lengths to allow for varying the length of the shelving system as well as varying the spacing between the support units, some of the through passages being located at lower areas of the support units to position some of the supporting rails for supporting an appropriate lower shelf and other of the through passages being located at upper areas of the support units to position other of the supporting rails for supporting an appropriate

Art Unit: 3637

upper shelf, whereby the intermediate support unit can be selectively moved toward either end support to accommodate different loads along the length of the shelving, each of the modular upright support units includes a front upright post and a rear upright post joined by cross brace means (44), some of the through passages located at lower areas of the support units are completely enclosed through passages, the other of the through passages located at upper areas of the support units are open notches near the tops of the support units.

Claims 1, 2, 3, 4, 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Noll. The patent to Noll (fig. 6A) teaches structure as claimed including a plurality of modular upright shelving supports (14) to be spaced from each other in the length direction and including a pair of end support units and at least one intermediate support unit between the end units, each unit including a plurality of generally horizontal through passages (24) for receiving and respectively supporting a plurality of elongated shelf-supporting rails (12) of varying lengths to allow for varying the length of the shelving system as well as varying the spacing between the support units, some of the through passages being located at lower areas of the support units to position some of the supporting rails for supporting an appropriate lower shelf and other of the through passages being located at upper areas of the support units to position other of the supporting rails for supporting an appropriate upper shelf, whereby the intermediate support unit can be selectively moved toward either end support to accommodate different loads along the length of the shelving, each of the modular upright support units includes a front upright post and a rear upright post joined by cross brace means

(40), some of the through passages located at lower areas of the support units are completely enclosed through passages, the upper and lower cross braces are aligned with respective pairs of upper and lower through passages in the upright posts.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 8, 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Noll in view of McIntyre et al. The patent to Noll teaches structure substantially as claimed including comprising a plurality of modular upright support units to be spaced from each other in the length direction and including a pair of end support units and at least one intermediate support unit between the end units, each unit including a front upright post (38) and a rear upright post having an upper passage and a lower passage, upper and lower cross braces (40) joining the front and rear upright posts, the upper and lower cross braces being aligned with the upper and lower passages, respectively, In the front

Art Unit: 3637

and rear upright posts the only difference being that the passages are not formed as part of the posts, but as a separate bracket member. However, the patent to McIntyre et al teaches the use of providing a lower through passage and an upper notch as part of the support. It would have been obvious at the time of the invention to modify the structure of Noll to include a lower through passage and upper notch as part of the support, as taught by McIntyre et al, since such structures are conventional alternative connecting structures used in the same intended purpose, thereby providing structure as claimed.

***Allowable Subject Matter***

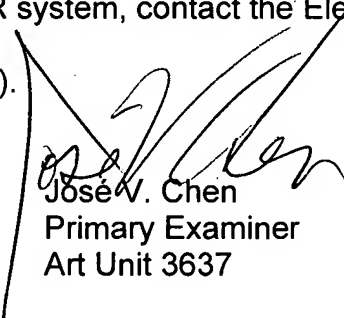
Claims 7, 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to José V. Chen whose telephone number is (571)272-6865. The examiner can normally be reached on m-f,m-th 5:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571)272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3637

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



José V. Chen  
Primary Examiner  
Art Unit 3637

Chen/jvc  
04-26-06